

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

NO MINUTES

MONDAY, OCTOBER 22, 2007
TUESDAY, OCTOBER 23, 2007

COURT CLOSED DUE TO WILDFIRES

October 24, 2007

D09080 Zucchet et al. v. City of San Diego

The portion of the judgment concerning the award of attorney fees incurred by Murphy, Inzunza and Zucchet in this action is vacated, and the case is remanded for the trial court to apply the standards set forth in section 800 in making the award of attorney fees. In all other respects, the judgment is affirmed. Murphy, Inzunza and Zucchet are to recover their costs on appeal. Irion, J.; We Concur: Benke, Acting P.J., McDonald, J.

D050066 People v. Schachter

Judgment affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Nares, J.

D050072 People v. Dominguez

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., Irion, J.

D050242 In re Elizabeth G., a Juvenile

The court is directed to amend the petitions, as sustained, to conform to its oral findings. In all other respects, the orders are affirmed. Haller, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D050138 People v. Bunch

The true findings on the allegations of the prior convictions and the sentence are reversed. In all other respects, the judgment is affirmed. The case is remanded to the trial court with directions to conduct a new hearing on the allegations of the prior convictions and hold a new sentencing hearing. Nares, Acting P.J.; We Concur: McDonald, J., Aaron, J.

D050697 In re Caitlyn L., a Juvenile

The judgment is affirmed. O'Rourke, J.; We Concur: McIntyre, Acting P.J., Irion, J.

D050694 In re Miguel A. et al., Juveniles

Notwithstanding the judicial error, the order is affirmed because the juvenile court no longer has jurisdiction to order visitation with Jose. CERTIFIED FOR PUBLICATION. McDonald, J.; We Concur Huffman, Acting P.J., McIntyre, J.

D050610 In re Christopher D. et al., Juveniles

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 24, 2007 (Continued)

D051333 In re Nesbitt on Habeas Corpus

The petition for writ of habeas corpus has been read and considered by Justices Huffman, Haller and Irion.

On April 10, 1998, petitioner pleaded guilty to two counts of lewd acts upon a child, and admitted the allegations that he suffered two serious felony prior convictions. In exchange, the People agreed to dismiss the remaining charges and to a stipulated sentence of 60 years to life. Petitioner was sentenced May 8, 1998, to the stipulated sentence and ordered to pay a restitution fine in the amount of \$10,000 pursuant to Penal Code section 1202.4, subdivision (b), payable forthwith pursuant to Penal Code section 2085.5.

Petitioner claims in the instant petition the sentencing court did not consider his inability to pay when it ordered restitution, and states that his attorney failed to raise the issue at sentencing. Petitioner was aware of the trial court's restitution order, and counsel's failure to contest it, when he was sentenced on May 8, 1998. Petitioner has waited over nine years to challenge the restitution order and counsel's performance. The petition is therefore procedurally barred because it is untimely, and petitioner has not established an exception to the procedural bar. (*In re Robbins* (1998) 18 Cal.4th 770, 814, fn. 34; *In re Clark* (1993) 5 Cal.4th 750, 797-798; *In re Bower* (1985) 38 Cal.3d 865, 873, fn. 3.)

The petition is denied.

D050018 People v. Wimberely

The judgment is affirmed. Irion, J.; We Concur: McDonald, Acting P.J., O'Rourke, J.

D051630 In re Amber M. on Habeas Corpus

The order of September 13, 2007, detaining Amber pending the September 27 disposition hearing is reversed, and the matter remanded to superior court for further proceedings as appropriate. The stay issued by this court on September 14, 2007, is vacated. This opinion will be final immediately as to this court. (Cal. Rules of Court, rule 8.264(b)(3).) O'Rourke, J.; We Concur: Huffman, Acting P.J., Haller, J.

D050914 People v. Barnhill

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

D051741 Felix G. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Felix G. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 25, 2007

D049710 Parkerson v. Carpenter

Order affirmed. Benke, Acting P.J.; We Concur: Nares, J., Haller, J.

D048960 People v. Cavalier

The judgment is affirmed. Benke, Acting P.J.; We Concur: Haller, J., O'Rourke, J.

D049898 In re Angel M., a Juvenile

The orders are affirmed. Benke, Acting P.J.; We Concur: Huffman, J., Nares, J.

D050427 People v. Sebald

The sentence on count 2 for possession of burglary tools is stayed. The superior court is ordered to prepare an amended abstract of judgment showing this modification and send it to the Department of Corrections. As so modified, the judgment is affirmed. Iron, J.; We Concur: McIntyre, Acting P.J., O'Rourke, J.

D050776 In re Taylor H., a Juvenile

The dispositional judgment is reversed. This case is remanded to the juvenile court with directions to order the Agency to give proper ICWA notice to any applicable tribes and the BIA and file all required documentation with the court. If, after proper notice, no tribe indicates that Taylor is an Indian child, the court shall reinstate the judgment. The remittitur is to issue forthwith. McConnell, P.J.; We Concur: Benke, J., Huffman, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
October 26, 2007

D047095 People v. Cole et al.

As to Cole, the judgment of conviction on counts 7 (Goins) and 22 for (Maroun) for selling securities by means of false statements or omissions in violation of section 25401 is reversed. As to Robles, the judgment of conviction on count 22 (Maroun) for selling securities by means of false statements or omissions in violation of section 25401 is reversed. The judgments of conviction for 11 of Cole's counts and eight of Robles's counts of selling a security without a broker-dealer's license in violation of section 25210 as outlined in footnote 29, *ante*, are reversed. The case is remanded for a new trial on these counts only, and for resentencing. In all other respects, the judgments are affirmed. CERTIFIED FOR PARTIAL PUBLICATION. Haller, J.; We Concur: Huffman, Acting P.J., Nares, J.

D049937 Guerrero et al. v. City of San Diego

The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Aaron, J.

D048728 People v. Farnsworth

The judgment is affirmed. O'Rourke, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

D044103 People v. Rivera

The petition for rehearing is denied.

D051635 Mancillas v. S & S Logistics, Inc.

Pursuant to California Rules of Court, rule 8.140, the appeal filed September 12, 2007, is DISMISSED for Appellant's failure to timely designate the record (Cal. Rules of Court, rules 8.120(a), 8.130(a)).

D051802 J.N. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency et al.

Let a peremptory writ issue directing the superior court to vacate its order of October 10, 2007, authorizing removal of the breathing tube and issuance of a DNAR directive, and enter a new order, consistent with the views expressed in this opinion, authorizing only the removal of the breathing tube. In all other respects, the petition is denied. The stay issued by this court on October 11, 2007, is vacated. The opinion will be final immediately as to this court. (Cal. Rules of Court, rule 8.264(b)(3).) CERTIFIED FOR PUBLICATION. Haller, J.; We Concur: Huffman Acting P.J., Irion, J.